Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1703

Gladys Beatty,

Petitioner

– against –

Lycoming County Children's Services, *et al.*,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

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NO. 77-1703

GLADYS BEATTY,
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vs.

LYCOMING COUNTY CHILDREN'S SERVICES, et al.
RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

The Respondent, Lycoming County Children's Services, respectfully prays that the Writ of Certiorari to the Supreme Court of Pennsylvania, sought by Petitioner, Gladys Beatty, be denied. The text of the decision of the Pennsylvania Supreme Court is reported as follows: In Re: William L., 383 A.2d 1228 (Pa. 1978), and is set forth at length in Petitioner, Marjorie Lehman's Petition, Docket Number 77-1704, pages 1a to 67a. The text of the Orphans' Court Decision in this particular matter, is contained in Petitioner's Petition, pages 1A to 9A.

COUNTERSTATEMENT OF THE CASE

On September 15, 1976, the Lycoming County Orphans' Court terminated the parental rights of the Petitioner, Gladys Beatty, for her daughter, Judith Beatty, who was then eleven (11) years of age. Judith Beatty had been removed from the home of her natural mother, Gladys Beatty in October, 1974, following an adjudication by the Lycoming County Juvenile Court, and has resided in a foster home since that time.

Both the Orphans' Court and the Pennsylvania Supreme Court directly reiterated that after approximately ten (10) years, Gladys Beatty's capacity to maintain a minimally adequate home for her four (4) children had led to the disruption of the family, and had not been remedied despite continuing assistance from caseworkers, nutrition aides, public health officials, and school counselors. The findings and conclusion that Mrs. Beatty's incapacity in regards to her youngest child, Judith Beatty, would not or could not be remedied was recited at length by the Orphans' Court and Supreme Court decisions.

Testimony at the Orphans' Court hearing indicated that the Children's Service Agency had been working with Gladys Beatty and her family since 1966, and that they had long been known to public health officials, with frequent public complaints being received concerning the extreme unsanitary conditions

in the various homes and aprtments where the family had lived. All of the witnesses, without exception, related conditions of garbage accumulation, filth, and even gross insect and rodent infestations. George Dooris, Williamsport Public Health Officer of twenty (20) years. standing, stated he even found cockroaches in the refrigerator and that he had never seen any more cockroaches than he did at the Beatty home. (Orphans' Court Transcript, page 50). Further Mr. Dooris stated:

> "A. Any building can be declared unfit for human habitation which is so unsanitary, unsafe that it could be a hazard to the occupants or to the public health. So, most times, Mrs. Beatty's house would come under that classification. It would be unsanitary, and could be declared unfit for human habitation." (Orphans' Court transcript at page 41).

Judge Thomas Raup, Orphans' Court Judge, reviewed the testimony that proved that the three (3) children immediately older than Judith all appeared in Juvenile Court in Lycoming County and were all removed from the home prior to or at the same time as Judith was placed in a foster home. Judge Raup notes that all three (3) older children progressed steadily and are on their way to becoming useful citizens; without exception, any progress was made out of the natural mother's home, and

regression evidenced when they returned home, even for a very short period of time. (Orphans' Court decision, see Petitioner's Petition, Appendix A).

ARGUMENT

REASONS FOR DENYING THE WRIT

1. THE DECISION OF THE PENNSYLVANIA SUPREME COURT IS CONSISTENT WITH DECISIONS OF OTHER APPELLATE COURTS AND THE UNITED STATES SUPREME COURT.

Petitioner buttresses her attack on the decision by the Pennsylvania Supreme Court in this particular matter, through reference to the case of Alsager vs. District Court of Polk County, Iowa, 406 F. Supp. 10, aff'd at 545 F.2d. 1137 (1976). Petitioner before the Orphans' Court and again before the Pennsylvania Supreme Court urged this particular decision, which differs both in fact, principle, and application to our present matter. In Alsager, a termination petition was filed in mid-1969, approximately one (1) month after five of the six Alsager children had been placed into the legal custody of the County of Polk, Iowa. Additionally, the evidence in the Iowa State Court was found insufficient by the Federal Court when it revealed merely that the Alsagers at some times permitted their children to leave the house in cold weather without winter clothing, allowed them to play in traffic, to annoy neighbors, to eat mush for supper, to live in a house containing

dirty dishes and laundry, and to sometimes arrive late at school. (Id., 406 F. Supp. at 22.)

In the Beatty case, we have a definite finding by the Orphans' Court that Judith Beatty was following into delinquent behavior as her older brothers and sister had, that she had been raised in deplorable and unsanitary and dangerous home conditions, that the family had received social service agency involvement for over seven (7) years, and the mother in the two (2) years since placement of Judith had made no consistent and stable adjustment to her living situation to justify the return of her daughter. The Orphans' Court concluded after a lengthy review of the facts that there had been a repeated and continuing incapacity on the part of Gladys Beatty which caused Judith to be without essential parental care, control or subsistance necessary for her physical and mental well-being. The Court stated that the "cause of the incapacity would appear to be a combination of low education, limited mental ability, and more importantly, a lack of emotional control and self-discipline on the part of the mother." (Petitioner's Appendix A, page 7A). The Pennsylvania Supreme Court also discussed at length the facts which constituted competent evidence necessary to sustain the termination of Gladys Beatty's parental rights. (See In Re William L., 383 A.2d at 1243-45; Lehman Appendix at 40a to 47a.) These facts when measured against previous decisions of the Pennsylvania Supreme Court, are wholly con-

sistent, and in line with judicial interpretations in other jurisdictions.

Petitioner next argues that the Pennsylvania Supreme Court is advancing a "best interest" approach in upholding the Orphans' Court termination of the parental rights. A reading of the Orphans' Court decision (Petitioner's Appendix A) reveals no reliance on a best interest foundation until precise and definite grounds for parental rights termination had been shown under the Pennsylvania statute. Also, the Pennsylvania Supreme Court does not rely upon the best interest considerations in its review of the Orphans' Court transcript and affirmance of the termination. Indeed, the Pennsylvania Supreme Court has stated often that, prior to the best interest of the children being considered, there must be grounds for involuntary termination proven by a preponderance of the evidence. (See In Re: Adoption of R. I., 361 A.2d 294, 468 Pa. 287 (1976); Adoption of Young, 364 A.2d 1307, 469 Pa. 14 (1976); Matter of Kapcsos, 360 A.2d 174, 468 Pa. 50 (1976)). Some jurisdictions are presently adopting a "best interest" consideration in their adoption and termination legislation. (See e.g. Colorado's "Parent-Child Legal Relationship Termination Act of 1977", Colo. Rev. Statutes, Ann., Section 19-11-101 et seq.) This change is through legislative action as it should be, and is respected by the Pennsylvania Court in our matter. (In Re William L., 383 A.2d at 1236; Lehman, Appendix A, 18a.)

Respondent emphasizes that rather than being in conflict with decisions from other jurisdictions, the Pennsylvania Supreme Court has set forth in detail in its decision the legislative basis and court interpretation appropriate in the Pennsylvania termination decisions. Additionally, there is no legitimate potential for conflicting interpretation of involuntary termination cases when this Court's decisions in the Smith vs. Offer, 53 L. Ed. 2d. 14 (1977) and Quillon vs. Walcott, 54 L. Ed. 2d. 511 (1978), cases are examined. The "unfitness" necessary is clearly enunciated in the Beatty facts. This particular decision of the Pennsylvania Supreme Court under attack is consistent with previous Pennsylvania termination cases, and in line with the demanding degree of proof necessary. In Re: Geiger, 331 A.2d 172, 459 Pa. 636 (1975). The "compelling state interest" recognized herein is the "state's responsibility to protect its weaker members" and the Pennsylvania court evaluates this foundation through appropriate United States Supreme Court decisions. (In Re: William L., 383 A.2d at 1236; Lehman, Appendix, 16a. to 18a.)

The inital "Questions Presented" and first "Argument" of Petitioner Beatty are clearly rebutted by review of the Pennsylvania Supreme Court's decision, In Re: William L., Supra. There is no basis to Petitioner's averment that no compelling state interest was shown or supported in terminating parental rights by the Pennsylvania courts. Moreover, the facts clearly show a repeated and continued

incapacity of Gladys Beatty's stretching well over five (5) years, that caused Judith Beatty to be without the parental care and control necessary for her physical and mental well-being. These conditions and causes had not improved consistently or even stabilized in almost ten (10) years, and would not in the future. A Writ of Certiorari to the Pennsylvania courts should not be granted on these bases.

2. THE DECISION OF THE PENNSYLVANIA SUPREME COURT IS CONSISTENT WITH UNITED STATES SUPREME COURT DECISIONS DEFINING CONSTITUTIONALLY PROTECTED FAMILY INTERESTS.

It is abundantly clear that there is a fundamental right emanating from the Constitution, which protects the integrity of the family unit from unwarranted intrusions by the state. This was most succinctly stated in Stanley vs. Illinois, 405 U.S. 645, at 651, 92 S. Ct. 1208, at 1213, 31 L. Ed. 2d. 551 (1972). (See also, cases cited in Sims vs. State Department of Public Welfare, 438 F. Supp. 1179, at 1190 (1977)). Indeed, Justice Samuel J. Roberts of the Pennsylvania Supreme Court, writing the majority opinion, discussed at length the substantive due process rights guaranteed under the Pennsylvania Statute in light of many Supreme Court decisions. See In Re: William L., 383 A.2d 1228, at 1234-35; Lehman Appendix, 12a to 15a.

Indeed, a reading of the decision in this matter, In re William L., Supra., will convince this Court that, contrary to Petitioner's arguments, the Pennsylvania Supreme Court decision dealt firmly with constitutionally protected family interests, and properly applied substantive due process in upholding the Orphans' Court termination of the parental rights of Gladys Beatty.

In Grayned vs. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972), by analogy, the Court suggests that standards that may be seen as vague in a statute may be safe from a definitive unconstitutional upholding if the needed specificity has been supplied by other decisions of a State Supreme Court. This thinking is quoted with favor in Alsager, 406 F. Supp. at 19. This is what the Pennsylvania Supreme Court has done, as specifically set forth in its decision, and even discussing the same cases that troubled Petitioner herein. (Compare Petitioner Beatty's Petition at Page 17, with In re William L., 383 A.2d at 1239, 1240, 1242-43 (footnote 25), 1246; and Lehman Appendix, 27a to 29a, 37a (footnote 25), 38a., 48a, 49a.)

Petitioner's allegations that §311(2) of the Pennsylvania Adoption Act is unconstitutionally vague are without merit. This legislation fairly puts a parent on notice that parental rights can be terminated where there is an abandonment or refusal to provide, or incapability of providing, essential parental care. This language of the Pennsylvania legis-

lature, when coupled with the array of Pennsylvania cases which speak to elements of what parental duties and responsibilities consist of, give very definite guidelines for interpretation of the law when applied to particular factual circumstances. (See, e.g., In Re: Lutheran Children and Family Service of Eastern Pennsylvania (Appeal of Diane B.), 321 A.2d 618, 456 Pa. 429 (1974); Smith Adoption, 194 A.2d 919, 412 Pa. 501 (1963); In Re: Adoption of Orwick, 347 A.2d 677, 464 Pa. 549 (1975); In Re: Adoption of McAhren, 331 A.2d 419, 460 Pa. 63 (1975); In Re Geiger, Supra.; Adoption of Croisette, 363 A.2d 263, 468 Pa. 417 (1976); McCray Adoption Case, 331 A.2d 652, 460 Pa. 210 (1975).

It would be impossible to set forth in the statute all of the circumstances which might arise in an infinite variety of factual circumstances, which could constitute a lack of essential parental care. The legislative approach, which is not at all uncommon in Anglo-American jurisprudence is to use a general standard which has a commonly accepted meaning, and which is susceptible of application on a case-by-case basis in the common law tradition by the Courts. A child and her well-being is not a chattel which a natural parent can possess or dicker with, but must be recognized as a vibrant and maturing individual with very basic biological, emotional and psychological needs. These basic human needs are initially presumed and intended to be provided by a natural parent in a loving and stable home

environment; however, this is too often not the reality of life. Therefore, governments have instituted and labored over statutes and standards by which conduct is to be measured, whether by a private individual, or as in this instance a county social agency. Therein, are persons trained to aid others in recognizing and striving to meet these minimal standards of parental actions, duties, and responsibilities. These persons are guided by legislative mandates, their life long experiences, and their decisions and actions overseen in particular instances by the Courts. Herein, Gladys Beatty had been known to social agencies in Lycoming County for a period in excess of ten (10) years, and the Orphans' Court in the termination matter recognized that there had been no consistent and stable home environment maintained by her during this period of time for her children. All public service agencies recognize the possible abuse of discretion, and judgmental decisions which may take place; however, there has not been, and remains no allegation of that type of arbitrary and subjective viewpoint in this proceeding.

The burden of proof assumed by the Respondent in an involuntary termination proceeding, particularly under the Pennsylvania statutes, is a very demanding one. In Re Geiger, Supra. It is a decision and assertion that is initially made by a Petitioner considering an involuntary termination, whether a person or agency, then developed and argued by a lawyer, evaluated and applied by a judge, and then reviewed by an appellate court.

Herein, these demanding and time-consuming steps have each been made, and the decision of the Pennsylvania Supreme Court is on firm constitutional foundation, which when examined by the scrutiny of this Court in its consideration of Gladys Beatty's Writ for Certiorari need not be further reviewed.

CONCLUSION

IN SUMMARY, it is submitted that sufficient due process procedures and standards have been and can be applied in the proper analysis of grounds of the involuntary termination in this matter, leading to an eventual adoption, to overcome any argument of the constitutionality of this section of the Pennsylvania Adoption Statute.

WHEREFORE, Respondent prays that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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